



[BILLING CODE: 6750-01S]

FEDERAL TRADE COMMISSION

16 CFR Part 4

Freedom of Information Act; Miscellaneous Rules

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission is updating its regulations regarding fees for the provision of services in disseminating information and records to the public. The updates reflect changes in, and additions to, the types of services that the Federal Trade Commission provides, and account for changes in the costs of providing such services.

DATES: These amendments are effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

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SUPPLEMENTARY INFORMATION: In a document previously published in the FEDERAL REGISTER, 78 FR 13570 (Feb. 28, 2013), the Federal Trade Commission (FTC or Commission), as required by the Freedom of Information Act (FOIA), sought comments on proposed revisions to its fee regulation. *See* 5 U.S.C. 552(a)(4)(A)(i). The

FTC proposed to change its fee schedule to implement the 2007 FOIA Amendments as appropriate¹ and to revise the agency's fee schedule to account for new and discontinued services and the current costs of providing services. The Commission stated that the proposed changes would also be useful in providing additional notice to the public and to the FTC's professional and administrative staff about the procedures governing how the agency responds to FOIA requests. The Commission is adopting the proposed rules with some further revisions in response to public comments.

A. Public Comments

The FTC received six comments in response to the proposed rulemaking changes; one each from Troy Abraham, William A. Cross, Ann Fennell, the Electronic Privacy Information Center (EPIC), Michael Ravnitzky, and Neal Seaman.²

The comments from EPIC and Mr. Ravnitzky generally supported the proposed rule amendments, with certain recommended changes, as discussed below. One comment did not address the proposed amendments at all, while the remaining comments took issue with FOIA fees generally, suggesting that they be kept at current levels, lowered, waived, or eliminated.³

As set out in the Notice of Proposed Rulemaking, the rule changes are

¹ The FOIA was amended in late 2007 by the Openness Promotes Effectiveness in our National Government Act of 2007, Pub. L. 110-175, 121 Stat. 2524.

² See <http://ftc.gov/os/comments/FOIAfeeschedule/index.shtm> for links to each comment.

³ Mr. Abraham stated that, while he supports "this bill" (presumably the FOIA) because "people have the right to have full access to information," the FTC should lower or waive FOIA fees, since "hidden information in the government should be provided free of charge." Mr. Cross opposed a fee increase, stating that it "amounts to another tax." He added his view that public identity theft would increase if fees are increased. Ms. Fennell stated that "fee increases should not be allowed unless they are balanced by all

consistent with statutory and Office of Management and Budget (OMB) mandates. The FOIA provides for the charging of fees “applicable to the processing of requests,”⁴ and sets limitations and restrictions on the assessment of certain fees.⁵ A separate provision provides for the waiver or reduction of fees if certain standards are satisfied.⁶ The Freedom of Information Reform Act of 1986 (FOIA Reform Act) directed the OMB to establish guidelines containing a uniform schedule of fees for individual agencies to follow when promulgating their own FOIA fee regulations. 5 U.S.C. 552(a)(4)(A)(i). On March 27, 1987, the OMB issued its Uniform FOIA Fee Schedule and Guidelines (OMB Fee Guidelines) but also concluded that creation of a government-wide fee schedule was precluded by language of the FOIA Reform Act that required “each agency’s fees to be based upon its direct reasonable operating costs of providing FOIA services.” *See* 52 FR at 10015. The FOIA Reform Act mandated that agencies conform their fee schedules to these guidelines. The guidelines specifically direct that “[a]gencies should charge fees that recoup the full allowable direct costs they incur...and shall use the most efficient and least costly methods to comply with requests for documents made under the FOIA.” *Id.* at 10018.

EPIC Comment

EPIC states that it largely supports the Commission’s proposals because the rule changes benefit FOIA requesters. For example, EPIC concurs with the Commission

of the proposed pro-public changes.” Mr. Seaman’s comment offers his view of the overall effectiveness of the FTC without addressing the proposed rule amendments.

⁴ 5 U.S.C. 552(a)(4)(A)(i).

⁵ 5 U.S.C. 552(a)(4)(A)(ii), (iv)-(vi), (viii).

⁶ *Id.* § 552(a)(4)(A)(iii).

proposal to increase the threshold for small-charge fee waivers “from those that do not exceed \$14 to those under \$25,” and with the proposed change that complies with the 2007 FOIA amendment provision precluding agencies from assessing search fees for untimely responses.

Additionally, EPIC specifically urges the FTC to: (1) revise its definition of a news media representative; (2) clarify which documents are public information and ensure that hyperlinks to those records work properly; (3) disclose private sector contract rates for FOIA processing; (4) refrain from prematurely closing FOIA requests; and (5) adopt alternative dispute resolution or arbitration to resolve delinquent FOIA fees.

First, EPIC claims that the Commission’s proposed definition of “*representative of the news media*”⁷ -- specifically the phrases “electronic dissemination of newspapers through telecommunications services” and the definition of a “freelance” journalist -- are dated. EPIC recommends that the FTC revise this provision to read as follows:

The term “representative of the news media” refers to any person actively

⁷ For Rule 4.8(b)(2)(iii), the Commission proposed this revised definition: “A *representative of the news media* is any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to the public. The term ‘news’ means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances where they can qualify as disseminators of news) who make their products available for purchase by or subscription by the general public or free distribution to the general public. These examples are not intended to be all-inclusive. As traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would provide a solid basis for such an expectation, but the past publication record of a requester may also be considered in making such a determination.”

gathering information to publish or broadcast news to the public. The term “news” means information that is about current events or that would be of current interest to the public. Examples of news media entities include print, broadcast and webcast news services available for purchase or subscription by the general public, or available to the general public by means of an online search.

The Commission declines to accept this proposal, and has determined to retain and adopt as final its proposed definition for a *representative of the news media*, which more closely conforms to the statutory definition set forth in the 2007 FOIA Amendments.⁸

Second, EPIC asks that the Commission clarify the proposed revision to Rule 4.8(b)(5),⁹ claiming that “in the digital reading room context, making public information available ‘while supplies last’ is inapposite.” EPIC recommends that the Commission revise the rule language to read as follows:

(5) *Materials available without charge.* These provisions do not apply to public records, including but not limited to Commission decisions, orders, and other public materials that may be made available to all requesters without charge.

The Commission agrees and is incorporating EPIC’s recommended language for the final amended version of Rule 4.8(b)(5).

Third, EPIC asks that the Commission disclose private sector contract rates for FOIA processing. The Commission agrees and intends to make available on the Public

⁸ Cf. 5 U.S.C. 552(a)(4)(A)(ii).

Record the appropriate sections of each of the two contracts to the extent permitted by, and in accordance with any notice required under, sections 6(f) and 21 of the FTC Act, or other applicable law. As discussed in the Notice of Proposed Rulemaking, the agency maintains microfiche storage and management contracts with Iron Mountain Archival Services (Iron Mountain) and the National Archive and Records Administration's Washington National Records Center (WNRC).¹⁰ The contract with Iron Mountain was awarded after full and open competitive bidding. Since WNRC is part of the National Archives and Records Administration (NARA), the FTC's contract with WNRC is technically an interagency agreement. The OMB Fee Guidelines encourage agencies "to contract with private sector services to locate, reproduce and disseminate records in response to FOIA Requests when that is the most efficient and least costly method. When doing so . . . agencies should ensure that the ultimate cost to the requester is no greater than it would be if the agency itself had performed these tasks." See 52 FR at 10018. The Commission has determined that the fees incurred by the requesters are no greater for the services that Iron Mountain and WNRC perform than they would be if the Commission staff itself performed these tasks.

Fourth, EPIC also asks that the Commission revise its proposed procedures for closing FOIA requests where the requester has not agreed that it will pay the fee after the request has been processed. The Commission proposed that –

⁹ Proposed Rule 4.8(b)(5) would read as follows: "*Materials available without charge*. These provisions do not apply to recent Commission decisions and other public materials that may be made available to all requesters without charge while supplies last."

¹⁰ Iron Mountain Contract # FTC-10-H0233 and Washington National Records Center (WNRC) Contract # FTC-12-I-0009.

If the agreement required by this section is absent, and if the estimated fees exceed \$25.00, the requester will be advised of the estimated fees and the request will not be processed until the requester agrees to pay such fees. If the requester does not respond to the notification that the estimated fees exceed \$25.00 within 10 calendar days from the date of the notification, the request will be closed.¹¹

EPIC states that Commission should grant requesters additional time to assess their financial ability to pay fees associated with processing their FOIA requests. The Commission agrees that extra time would be beneficial to FOIA requesters and is extending the timeframe to 20 calendar days. The Department of Justice's Office of Information Policy, which oversees compliance by federal government agencies with FOIA, concurs with this time frame.

Finally, EPIC asks that when resolving delinquent FOIA fees the Commission first pursue alternative dispute resolution and arbitration before employing other legally authorized means such as disclosure to consumer reporting agencies and use of collection agencies.¹² EPIC describes the FTC as the "nation's consumer protection agency," charged with enforcing the Fair Debt Collection Practices Act (FDCPA) and notes that in this role, the FTC sometimes observes abusive debt collection practices. The FTC agrees that there are situations where alternative dispute resolution methods are appropriate and

has revised the language to clarify the Commission may use these methods when

¹¹ See Proposed Rule 4.8(d)(3).

¹² See proposed Rule 4.8(k) in the Notice of Proposed Rulemaking.

appropriate.

Michael Ravnitzky's Comment

Mr. Ravnitzky stated that some of the Commission's recommended changes to the fee regulation seem reasonable but he sought clarification regarding a few proposals. For example, he considered the proposal to define the term "duplication" in proposed Rule 4.8(a)(2), which includes the process of converting paper to electronic format, as reasonable but requested that the rule clarify that duplication costs for converting paper to electronic format should not apply when the Commission already maintains the record in electronic format. Mr. Ravnitzky adds that, when proposed Rule 4.8(a)(2) is read in conjunction with proposed Rule 4.8(b)(6), the text does not make clear that electronic scanning applies the quarterly hour rate of the operator but not the per page duplication fee. We understand Mr. Ravnitzky's concern. The definition for "duplication" in proposed Rule 4.8(a)(2) states as follows:

The term *duplication* refers to the process of making a copy of a document for the purpose of releasing that document in response to a request for Commission records. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation such as magnetic tape or computer disc. For copies prepared by computer and then saved to a computer disc, the Commission charges the direct costs, including operator time, of production of the disc or printout if applicable. Where paper documents must be scanned in order to comply with a requester's preference to receive the records in an electronic format, the requester shall pay the direct costs associated with scanning those

materials.

Therefore, if the requester seeks a response in electronic format and a paper record must be converted to comply with that request, it is clear that the agency can charge both operator time for the conversion and the output format (if it is computer disc, the fee for the disc). If the requester seeks responsive information in electronic format which already exists in electronic format, the Commission can charge for the operator time to copy/convert from one electronic format to the specific electronic format desired by the requester (for example, the time for copying/converting information directly from the computer to a computer disc and the fee for the computer disc). Thus, although the Commission agrees that operator time for converting paper to electronic format should not be charged when the information already exists in electronic format, there may be duplication charges associated with converting from one electronic format to another electronic format that serves as the output given to the requester. In the final rule, the Commission clarifies that duplication costs include direct costs associated with copies saved to computer disc and other output formats. The final rule also adds an additional line to Rule 4.8(b)(6)'s schedule of direct costs to clarify allowable duplication costs for a non-paper format of reproduction. If the output format is paper, then the Commission will continue to charge per page as allowable per the requester's fee category.

Regarding the introductory table of fee categories set out in proposed Rule 4.8(b), Mr. Ravnitzky claims that the proposed fee category of "Other (General Public)" is inaccurate and that the FOIA expressly sets out "all other requesters" for this default category. The Commission agrees and has adjusted this category to "All other requesters

(including members of the general public).”

Regarding proposed Rule 4.8(b)(7) on allowable fee charges for untimely responses and exceptions for unusual or exceptional circumstances, Mr. Ravnitzky argues the provision for exceptions is ambiguous and not clearly defined. The revised rule language incorporates by reference the FOIA statutory standard and factors provided in the legislative history. *See* 5 U.S.C. 552(a)(6), *see also* H.R. Rep. No. 104-795, at 24-25, 1996 U.S.C.C.A.N. 3448, 3468 (1996) (specifying factors that may be considered in determining whether “exceptional circumstances” exist). The Commission is therefore adopting as final proposed Rule 4.8(b)(7).

For proposed Rule 4.8(c) on information needed to make fee category determinations, Mr. Ravnitzky claims that the description lacks a presumption of the requester’s good faith statement in a request. The Commission’s determination of the appropriate category for an individual requester depends upon the intended use of the information sought, and also, for some categories, on the identity of the requester.¹³ The OMB FOIA Fee Guidelines also specify that where “use is not clear from the request . . . agencies should seek additional clarification before assigning the request to a specific category.”¹⁴ The FTC solicits the amount of information sufficient to ensure that requesters meet the statutory standards. The Commission is adopting as final proposed Rule 4.8(c) which includes an additional clarifying instruction that asks requesters

¹³ *See* 5 U.S.C. 552(a)(4)(A)(ii).

¹⁴ *See* OMB FOIA Fee Guidelines, 52 Fed. Reg. at 10,018; *see also* *McClellan v. Carlucci*, 835 F.2d 1282, 1287 (9th Cir. 1987)(“Legislative history and agency regulations imply that an agency may seek additional information when establishing a requester’s category for fee assessment.”).

whether the request is for commercial or noncommercial purposes.

Finally, for proposed Rule 4.8(e)(2) setting out fee waiver standards, Mr. Ravnitzky claims the provision is cumbersome and should incorporate a presumption of good faith. The statutory fee waiver standard contains two basic requirements: the public interest requirement (corresponding to/incorporated by fee waiver factors (i)(A)-(D) in Rule 4.8(e)(2)); and the requirement that the requester's commercial interest in the disclosure, if any, must be less than the public interest in it (corresponding to/incorporated by fee waiver factors (ii)(A)-(B) in the Rule).¹⁵ Both of these requirements must be satisfied by the requester before properly assessable fees are waived or reduced under the statutory standard. Further, requesters should address both of the statutory requirements in sufficient detail for the agency to make an informed decision as to whether it can appropriately waive or reduce the fees in question.¹⁶ Thus, the Commission is simply following the statutory standard on fee waiver determinations to ensure that the public gets the benefit of the information that is released to the requester without charge. The Commission is making one clarification to Rule 4.8(e)(1) to ask for sufficient detail in fee waiver requests and is otherwise adopting the remainder of proposed Rule 4.8(e)(2) as final.

Certain proposed rule changes did not garner any comment. Accordingly, the Commission adopts as final the proposed rule changes to Rule 4.8(a)(3)-(4), 4.8(b)(2)(i)-

¹⁵ See 5 U.S.C. 552(a)(4)(A)(iii).

¹⁶ See, e.g., *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (reiterating that requests for fee waivers "must be made with reasonable specificity . . . and based on more than conclusory allegations") (quotation marks and internal citations omitted); *McClellan*, 835 F.2d at 1285 (stating that conclusory statements will not support fee waiver request).

(ii), 4.8(b)(4), and 4.8(f). Rule 4.8(b)(3) is adopted as final with an additional formatting change to be consistent with other sections.

Regulatory Flexibility Act and Paperwork Reduction Act.

The Commission certifies that the Rule amendments set forth in this document do not require initial or final regulatory analyses under the Regulatory Flexibility Act. *See* 5 U.S.C. 603(a) and 604(a). Those requirements do not apply to agency rules of practice and procedure that are legally exempt from the notice-and-comment requirements of the Administrative Procedure Act. *See* 5 U.S.C. 553(b)(3)(A). In any event, the Commission does not believe the amendments will have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. *See* 5 U.S.C. 605(b). The Commission anticipates that the economic impact of the amendments will be minimal, if any, and most requests for access to FTC records are filed by individuals who are not “small entities” within the meaning of that Act. *Id.* at 601(6). The Rule amendments also do not contain information collection requirements within the meaning of the Paperwork Reduction Act, 44 U.S.C. 3501-3520.

List of Subjects in 16 CFR Part 4

Administrative practice and procedure, Freedom of Information Act.

For the reasons set forth in the preamble, the Federal Trade Commission is amending Title 16, Chapter I, Subchapter A of the Code of Federal Regulations as follows:

PART 4—MISCELLANEOUS RULES

1. The authority citation for Part 4 continues to read as follows:

Authority: 15 U.S.C. 46, unless otherwise noted.

2. Amend §4.8 by revising paragraphs (a)(2), (a)(3) and (a)(4), the introductory text of paragraph (b), (b)(2), (b)(3), (b)(4), (b)(5), and (b)(6), by adding a new (b)(7), and by revising paragraphs (c), (d), (e), (f) and (k), to read as follows:

§4.8. Costs for obtaining Commission records.

(a) ***

(2) The term *duplication* refers to the process of making a copy of a document for the purpose of releasing that document in response to a request for Commission records.

Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation such as magnetic tape or computer disc. For copies prepared by computer and then saved to a computer disc, the Commission charges the direct costs, including operator time, of production of the disc or other output format.

Where paper documents must be scanned in order to comply with a requester's preference to receive the records in an electronic format, the requester shall pay the direct costs associated with scanning those materials. As set out in § 4.8(b), certain requesters do not pay for direct costs associated with duplicating the first 100 pages.

(3) The term *review* refers to the examination of documents located in response to a request to determine whether any portion of such documents may be withheld, and the redaction or other processing of documents for disclosure. Review costs are recoverable from commercial use requesters even if a record ultimately is not disclosed. Review time includes time spent considering formal objections to disclosure made by a business

submitter but does not include time spent resolving general legal or policy issues regarding the release of the document.

(4) The term *direct costs* means expenditures that the Commission actually incurs in processing requests. Direct costs include the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of document review facilities or the costs of heating or lighting such a facility or other facilities in which records are stored. The direct costs of specific services are set forth in §4.8(b)(6).

(b) *Fees*. User fees pursuant to 31 U.S.C. 9701 and 5 U.S.C. 552(a) shall be charged according to this paragraph, unless the requester establishes the applicability of a public interest fee waiver pursuant to § 4.8(e). The chart summarizes the types of charges that apply to requester categories set out in paragraphs (b)(1)-(b)(3).

Requester Categories	Fee Charged for All Search Time	Fee Charged for All Review Time	Duplication Charges
Commercial	Fee	Fee	Fee charged for all duplication

Educational, Non-commercial Scientific Institution, or News Media	No charge	No charge	No charge for first 100 pages
All other requesters (including members of the general public)	Fee after two hours	No charge	No charge for first 100 pages

* * * * *

(2) *Educational requesters, non-commercial scientific institution requesters, and representative of the news media.* Requesters in these categories will be charged for the direct costs to duplicate documents, excluding charges for the first 100 pages.

(i) An *educational institution* is a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further the scholarly research of the institution and are not sought for a commercial or an individual use or

goal.

(ii) A *non-commercial scientific institution* is an institution that is not operated on a *commercial* basis as that term is referenced in paragraph (b)(1) of this section, and that is operated solely to conduct scientific research the results of which are not intended to promote any particular product or industry.

(iii) A *representative of the news media* is any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to the public. The term “news” means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances where they can qualify as disseminators of news) who make their products available for purchase by or subscription by the general public or free distribution to the general public. These examples are not intended to be all-inclusive. As traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would provide a solid basis for such an expectation, but the past publication record of a requester may also be considered in making such a determination.

(3) *Other requesters.* Other requesters not described in paragraphs (b)(1) or (2) will be charged for the direct costs to search for and duplicate documents, except that the first 100 pages of duplication and the first two hours of search time shall be furnished without charge.

(4) *Waiver of small charges.* Notwithstanding the provisions of paragraphs (b)(1), (2), and (3) of this section, charges will be waived if the total chargeable fees for a request are under \$25.00.

(5) *Materials available without charge.* These provisions do not apply to public records, including but not limited to Commission decisions, orders, and other public materials that may be made available to all requesters without charge.

(6)(i) *Schedule of direct costs.* The following uniform schedule of fees applies to records held by all constituent units of the Commission:

Duplication:	
Paper to paper copy (up to 8.5" x 14").	\$0.14 per page
Converting paper into electronic format (scanning)	Quarter hour rate of operator (Clerical, Other Professional, Attorney/Economist)

Other reproduction (e.g., computer disk or printout, microfilm, microfiche, or microform)	Actual direct cost, including operator time.
Electronic Services:	
Preparing electronic records and media	\$10.00 per qtr. hour
Compact disc (CD)	\$3.00 per disc
DVD	\$3.00 per disc
Videotape cassette	\$2.00 per cassette
Microfilm Services:	
Conversion of existing fiche/film to paper	\$0.14 per page
Other Fees:	
Certification	\$25.00 each
Express Mail	U.S. Postal Service Market Rates

Records maintained at Iron Mountain or Washington National Records Center facilities (records retrieval, re-filing, et cetera)	Contract Rates
Other Services as they arise	Market Rates

(ii) Search, review and duplication fees. Agency staff is divided into three categories: clerical, attorney/economist, and other professional. Fees for search and review purposes, as well the costs of operating duplication machinery such as converting paper to electronic format (scanning), are assessed on a quarter-hourly basis, and are determined by identifying the category into which the staff member(s) conducting the search or review or duplication procedure belong(s), determining the average quarter-hourly wages of all staff members within that category, and adding 16 percent to reflect the cost of additional benefits accorded to government employees. The exact fees are calculated and announced periodically and are available from the Consumer Response Center, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580; (202) 326–2222. (7) *Untimely responses.* Search fees will not be assessed for responses that fail to comply with the time limits in which to respond to a Freedom of Information Act request, provided at 5 U.S.C. 552(a)(4)(A)(viii) and § 4.11(a)(1)(ii), if there are no unusual or exceptional circumstances, as those terms are defined by 5 U.S.C. 552(a)(6) and

§4.11(a)(1)(ii). Duplication fees will not be assessed for an untimely response, where there are no unusual or exceptional circumstances, made to a requester qualifying for one of the fee categories set forth in §4.8(b)(2).

(c) *Information to determine fees.* Each request for records shall set forth whether the request is made for either commercial or non-commercial purposes or whether the requester is an educational institution, a noncommercial scientific institution, or a representative of the news media. The deciding official (as designated by the General Counsel) will use this information, any additional information provided by the requester, and any other relevant information to determine the appropriate fee category in which to place the requester. *See* § 4.11(a)(3)(i)(A)(3) for procedures on appealing fee category and fee waiver determinations.

(d) *Agreement to pay fees.* (1) Each request that does not contain an application for a fee waiver as set forth in § 4.8(e) shall specifically indicate that the requester will either:

(i) Pay, in accordance with § 4.8(b), whatever fees may be charged for processing the request; or

(ii) Pay such fees up to a specified amount, whereby the processing of the request would cease once the specified amount has been reached.

(2) Each request that contains an application for a fee waiver shall specifically indicate whether the requester, in the case that the fee waiver is not granted, will:

(i) Pay, in accordance with §4.8(b), whatever fees may be charged for processing the request;

(ii) Pay fees up to a specified amount, whereby the processing of the request would cease once the specified amount has been reached; or

(iii) Not pay fees, whereby the processing of the request will cease at the point fees are to be incurred in accordance with §4.8(b).

(3) If the agreement required by this section is absent, and if the estimated fees exceed \$25.00, the requester will be advised of the estimated fees and the request will not be processed until the requester agrees to pay such fees. If the requester does not respond to the notification that the estimated fees exceed \$25.00 within 20 calendar days from the date of the notification, the request will be closed.

(e) *Public interest fee waivers* —(1) *Procedures*. A requester may apply for a waiver of fees. The requester shall explain in sufficient detail why a waiver is appropriate under the standards set forth in this paragraph. The application shall also include a statement, as provided by paragraph (d) of this section, of whether the requester agrees to pay costs if the waiver is denied. The deciding official (as designated by the General Counsel) will rule on applications for fee waivers. To appeal the deciding official's determination of the fee waiver, a requester must follow the procedures set forth in §4.11(a)(3).

(2) *Standards*. (i) The first requirement for a fee waiver is that disclosure will likely contribute significantly to public understanding of the operations or activities of the government. This requirement shall be met if the requester establishes that:

(A) The subject matter of the requested information concerns the operations or activities of the Federal government;

(B) The disclosure is likely to contribute to an understanding of these operations or

activities;

(C) The understanding to which disclosure is likely to contribute is the understanding of the public at large, as opposed to the understanding of the individual requester or a narrow segment of interested persons; (e.g., by providing specific information about the requester's expertise in the subject area of the request and about the ability and intention to disseminate the information to the public); and

(D) The likely contribution to public understanding will be significant.

(ii) The second requirement for a fee waiver is that the request not be primarily in the commercial interest of the requester. This requirement shall be met if the requester shows either:

(A) That the requester does not have a commercial interest that would be furthered by the requested disclosure; or

(B) If the requester does have a commercial interest that would be furthered by the requested disclosure, that the public interest in disclosure outweighs the identified commercial interest of the requester so that the disclosure is not primarily in the requester's commercial interest.

(f) *Searches that do not yield responsive records.* Charges may be assessed for search time even if the agency fails to locate any responsive records or if it locates only records that are determined to be exempt from disclosure.

* * * * *

(k) *Effect of the Debt Collection Act of 1982 (Pub. L. 97-365), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134).* The Commission will pursue

repayment, where appropriate, by employing the provisions of the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996, the Federal Claims Collection Standards (FCSS), 31 CFR 900-904, and any other applicable authorities in collecting unpaid fees assessed under this section, including disclosure to consumer reporting agencies and use of collection agencies. The FTC also reserves the legal right to employ other lawful debt collection methods such as alternative dispute resolution and arbitration when appropriate.

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 2014-05955 Filed 03/20/2014 at 8:45 am; Publication Date: 03/21/2014]